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September 12, 2008

**VIA E-MAIL PStutzman@pdc.wa.gov
and VIA FEDERAL EXPRESS**

Philip E. Stutzman
Director of Compliance
711 Capitol Way, Rm 206
P.O. Box 40908
Olympia, WA 98504-0908

**Re: Complaint Against Washington Public Utility Districts Association for Violations of
RCW 42.17**

Dear Mr. Stutzman:

Enclosed is a Complaint against the Washington Public Utility Districts Association ("WPUDA") for violations of the Public Disclosure Act, Ch. 42.17 RCW, and is submitted pursuant to WAC 390-37-040. Also enclosed are Exhibits A – K to the Complaint and a CD for your convenience.

Please let me know if you have any questions.

Very truly yours,



Markham A. Quehrn

MAQ:GSW
Enclosures

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STATE OF WASHINGTON

BEFORE THE PUBLIC DISCLOSURE COMMISSION

IN RE COMPLIANCE
WITH RCW 42.17

PDC Case No.

Washington Public Utility Districts
Association

COMPLAINT

Puget Sound Energy, Inc. ("PSE"), by and through undersigned counsel, brings the following Complaint against the Washington Public Utility Districts Association ("WPUDA") pursuant to Ch. 42.17 RCW and WAC 390-37-040, and pleads as follows:

I. PARTIES AND AUTHORITY

1.1 The Public Disclosure Commission (the "PDC" or "Commission") has authority to investigate complaints made under RCW 42.17 *et seq.* and to enforce its provisions. *See* RCW 42.17.350; 42.17.360.

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1.2 WPUDA is the functional equivalent of a public agency and is therefore subject to the Public Disclosure Act (the "Act"). *See Telford v. Thurston County Bd. of Comm'rs*, 95 Wn. App. 149 (an association is a public agency if it "serve[s] a public purpose, [is] publicly funded, [is] run by government officials and [is] created by government officials"), *rev. denied*, 138 Wn.2d 1015 (1999).

II. WPUDA VIOLATIONS

2.1 In June, July and August 2008, WPUDA violated RCW 42.17.130¹ when it used public funds and/or public facilities, including the use of employees of the agency, to promote a ballot measure by paying the salary of Dave Metheny while Mr. Metheny was working as the campaign director for People for Yes on Whidbey PUD. People for Yes on Whidbey PUD is a political committee that was formed for the sole purpose of promoting a 2008 general election local ballot measure to form a Whidbey Island public utility district to take control of PSE's electrical service and assets on Whidbey Island ("Whidbey PUD"). *See Exhibit A*, which includes People for Yes on Whidbey PUD's Form C1pc filed May 7, 2008, and the Schedule B to C4 – Amendments dated August 25, 2008 which shows stipend payments to Dave Metheny on June 4, 2008 and July 15, 2008; *see also Exhibit B*, which is a copy of a *Whidbey News Times* article dated August 27, 2008, entitled "Payments Cause Rift in Whidbey PUD Ranks" that quotes Mr. Metheny as saying that WPUDA paid him "\$2,000 in June, July and then August"; *see also Exhibit C*, which is a copy of the *South*

¹ *See also In re: Valley Medical Center* Final Order, PDC Case No. 06-384; *In re: City of SeaTac* Final Order, PDC Case No. 07-030.

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1 *Whidbey Record* news article dated August 24, 2008, entitled "Member of Whidbey PUD
2
3 Group is Gone After Questions Over 'Secret' Payments to Campaign Director."
4

5 2.2 WPUDA violated RCW 42.17.130 by making a monetary contribution of
6
7 \$6,475.00 to People for Yes on Whidbey PUD, which was created for the sole purpose of
8
9 promoting a 2008 general election local ballot measure to form a Whidbey Island public
10
11 utility district to take control of PSE's electrical service and assets on Whidbey Island. *See*
12
13 **Exhibit A**, which includes People for Yes on Whidbey PUD's Form C3 dated August 24,
14
15 2008 showing a cash receipt from WPUDA received August 20, 2008.
16
17

18 2.3 WPUDA's in-kind contribution of staff time to People for Yes on Whidbey
19
20 PUD on June 30, 2008 and on July 31, 2008, to promote the 2008 Whidbey PUD ballot
21
22 measure, also violated RCW 42.17.130. *See* **Exhibit A**, which includes People for Yes on
23
24 Whidbey PUD's Schedule B to C4 Report – Amendments dated August 25, 2008.
25
26

27 2.4 Likewise, WPUDA violated RCW 42.17.130 when it provided a monetary
28
29 contribution of \$6,490.00 to Citizens for Local Power, a political committee formed for the
30
31 sole purpose of promoting a 2008 general election local ballot measure to authorize Public
32
33 Utility District No. 1 of Jefferson County ("Jefferson PUD") to take control of PSE's
34
35 electrical service and assets within a portion of Jefferson County. *See* **Exhibit D**, which
36
37 includes Citizens for Local Power's Form C1pc filed June 16, 2008 and its Form C3 dated
38
39 August 25, 2008, showing a cash receipt from WPUDA received August 25, 2008.
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41

42 2.5 WPUDA used public funds and/or public facilities to pay for political
43
44 advertising—printing road and yard signs for People for Yes on Whidbey PUD—in
45
46
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1 violation of RCW 42.17.130. See **Exhibit A**, which includes People for Yes on Whidbey
2
3 PUD's Schedule B to C4 dated September 9, 2008, listing an in-kind contribution from
4
5 WPUDA received on August 26, 2008; see also **Exhibit B**, which is the *Whidbey News*
6
7 *Times* article stating: "WPUDA was funding [People for Yes on Whidbey PUD's]
8
9 advertising, printing road signs"
10

11 2.6 WPUDA used public funds and/or public facilities, in violation of RCW
12
13 42.17.130, when it facilitated and/or paid for studies prepared for the purpose of promoting
14
15 these local ballot measures, including but not limited to the WPUDA Summary of Taxes
16
17 Paid by Investor Owned Utilities and Public Utility Districts dated July 31, 2008. See
18
19 **Exhibit E**, which is a copy of the July 2008 emails between WPUDA and Robert Schneider,
20
21 consultant for the Public Utility District No. 1 of Skagit County ("Skagit County PUD") and
22
23 Jefferson PUD, wherein Mr. Schneider requests that a tax study be prepared and the email
24
25 from David Johnson to WPUDA asking for information on taxes; **Exhibit F**, which is a
26
27 copy of the WPUDA Summary of Taxes Paid by Investor Owned Utilities and Public Utility
28
29 Districts dated July 31, 2008; **Exhibit G**, which is a copy of the WPUDA press release dated
30
31 August 7, 2008 entitled "Study Shows No Loss of Tax Revenues If PUDs Acquire PSE
32
33 Assets".
34
35
36
37
38

39 2.7 WPUDA used public funds and/or public facilities, including the use of
40
41 employees of the agency, to support a ballot measure in violation of RCW 42.17.130 when it
42
43 paid for expert analysts and planning on behalf of People for Yes on Whidbey PUD. See
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45
46
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1 **Exhibit B** that states: "WPUDA was funding [People for Yes on Whidbey PUD's] . . . with
2
3 expert analysts"
4

5 2.8 WPUDA used public funds and/or public facilities in violation of RCW
6
7 42.17.130 when it produced and distributed its Summer 2008, Vol. 2, No. 3 *Connections*
8
9 publication. *See Exhibit H*, which is a copy of the *Connections* newsletter distributed by
10
11 WPUDA and accessible to the public at-large via its website. The publication provides one-
12
13 sided information promoting the three upcoming PUD ballot measures (Skagit County PUD,
14
15 Whidbey PUD and Jefferson PUD) which will ask voters to decide, in one instance, whether
16
17 to create a public utility district for the purpose of acquiring PSE's electric facilities or, in
18
19 other instances, whether to allow an existing public utility district to do the same. The
20
21 *Connections* newsletter is not objective, fair, or accurate as required under the Act. *See*
22
23 WAC 390-05-271. It does not simply recite the facts for the voting public, but instead
24
25 presents a slanted view in favor of public utility districts and against PSE. Furthermore, the
26
27 information is not presented in a manner that is normal and regular for the agency. *See*
28
29 RCW 42.17.130(3). Instead, it is presented as propaganda for the upcoming elections. The
30
31 newsletter is still available to the public on WPUDA's website and, as of this date, is an
32
33 ongoing violation.
34
35
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38

39 2.9 In addition to the in-kind contribution noted above, WPUDA also violated
40
41 RCW 42.17.130 in providing public facilities and resources in the form of staff assistance,
42
43 advice, and counseling with respect to the promotion of these local ballot measures. *See*
44
45 e.g., **Exhibit I**, email correspondence from Dean Boyer of WPUDA to Dave Johnson of
46
47

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1 Skagit County PUD dated July 16, 2008 and email correspondence dated July 1, 2008 from
2
3 Dean Boyer asking for Skagit County PUD, Jefferson PUD and Whidbey PUD to proof read
4
5 the *Connections* article (attached as **Exhibit H**); *see also* **Exhibit J**, which includes (1)
6
7 email correspondence from WPUDA offering to assist Skagit Citizens for Electric Authority
8
9 – a political committee formed for the sole purpose of promoting a 2008 general election
10
11 local ballot measure to authorize Skagit County PUD to take over PSE's electrical service
12
13 and assets in Skagit County – with a meeting organized by Virginia Wolff, the Treasurer of
14
15 Skagit Citizens for Electric Authority; and (2) the Skagit Citizens for Electric Authority's
16
17 Form C1pc filed August 5, 2008; *see also* **Exhibit E**, the email exchange between WPUDA
18
19 and Skagit County PUD regarding WPUDA obtaining/preparing the tax study (attached as
20
21 **Exhibit F**).
22
23
24

25
26 2.10 WPUDA also used public funds and/or public facilities in violation of RCW
27
28 42.17.130 in producing and publishing various website materials, accessible to the public at-
29
30 large, for the purpose of promoting these local ballot measures. *See* **Exhibit K**, which
31
32 includes copies of data published on WPUDA's website as of September 11, 2008 in
33
34 promotion of these local ballot measures.
35
36

37 III. PRAYER FOR RELIEF

38
39 WHEREFORE, PSE prays for relief as follows:
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41 3.1 For this Commission to investigate the allegations made in this Complaint
42
43 and to enforce the provisions of the Act against WPUDA as the Commission deems just and
44
45 equitable under the circumstances;
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1 3.2 For such other and further relief as the Commission may deem just and
2
3 equitable under the circumstances.
4

5
6 DATED: September 12th, 2008
7

PERKINS COIE LLP

8
9 By: 

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21 Attorneys for Puget Sound Energy, Inc.
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Exhibit	Description
A	People for Yes on Whidbey PUD's Schedule B to C4 – Amendments dated August 25, 2008
B	<i>Whidbey News Times</i> article dated August 27, 2008, entitled "Payments Cause Rift in Whidbey PUD Ranks"
C	<i>South Whidbey Record</i> news article dated August 24, 2008, entitled "Member of Whidbey PUD Group is Gone After Questions Over 'Secret' Payments to Campaign Director."
D	Citizens for Local Power's Form C1pc filed June 16, 2008 and its Form C3 dated August 25, 2008
E	July 2008 emails between WPUDA and Robert Schneider, consultant for Skagit PUD and Jefferson PUD, wherein Mr. Schneider requests that a tax study be prepared and the email from David Johnson to WPUDA asking for information on taxes
F	WPUDA generated tax study entitled "Summary of Taxes Paid By Investor Owned Utilities and Public Utility Districts" dated July 31, 2008
G	The WPUDA press release dated August 7, 2008 entitled "Study Shows No Loss of Tax Revenues If PUDs Acquire PSE Assets"
H	<i>Connections</i> newsletter, distributed by WPUDA, Summer 2008, Vol. 2, No. 3
I	Email correspondence from Dean Boyer of WPUDA to Dave Johnson of Skagit PUD dated July 16, 2008 and email correspondence dated July 1, 2008 from Dean Boyer asking for Skagit PUD, Jefferson PUD and Whidbey PUD to proof read the <i>Connections</i> article
J	Email correspondence from WPUDA offering to assist Skagit Citizens for Electric Authority with a meeting organized by Virginia Wolff; and Skagit Citizens for Electric Authority's Form C1pc filed August 5, 2008
K	Copies of data published on WPUDA's website as of September 11, 2008 which promotes these local ballot measures